Translated by Abu Amina Elias

In the name of Allah, the Gracious, the Merciful

The following text, al-Waraqāt fī Uṣūl al-Fiqh, is a primer on the fundamentals of Islamic jurisprudence by Imām al-Ḥaramayn al-Juwaynī. The purpose of the text is to introduce students to the source methodology of Muslim scholars in deriving rules from the Quran and Sunnah.

الورقات في أصول الفقه

al-Waraqāt fī Uṣūl al-Fiqh

بِسمِ اللهِ الرَّحمَنِ الرَّحِيمِ

In the name of Allah, the Gracious, the Merciful.

معنى أصُول الْفِقْه

The meaning of Uṣūl al-Fiqh

هَذِه وَرَقَات تَشْتَمِل على فُصُول من أصُول الْفِقْه وَذَلِكَ مؤلف من جزأين مفردين

These pages include sections of the fundamentals of jurisprudence, which is composed of two individual parts.

فَالْأَصْل مَا بني عَلَيْهِ غَيره وَالْفرع مَا يبْنى على غَيره

The 'root' (*al-aṣl*) is that which other topics are based upon. The branch (*al-far'*) is that which is based upon another topic.

وَالْفِقْه معرفَة الْأَحْكَام الشَّرْعِيَّة الَّتِي طريقها الِاجْتِهَاد

Jurisprudence (*al-fiqh*) is knowledge of the rulings of the Law (*al-sharīah*) that are derived by way of independent reasoning (*al-ijtihād*).

أَنْوَاع الحكم

Categories of rulings

وَالْأَحْكَام سَبْعَة الْوَاجِب وَالْمَنْدُوب والمباح والمحظور وَالْمَكْرُوه وَالصَّحِيح وَالْبَاطِل

Rulings are seven types: obligatory (*al-wājib*), recommended (*al-mandūb*), permissible (*al-mubāḥ*), forbidden (*al-maḥẓūr*), disapproved (*al-makrūh*), sound (*al-ṣaḥīḥ*), and invalid (*al-bāṭil*).

فَالْوَاجِب مَا يُثَاب على فعله ويعاقب على تَركه

Obligatory is an action which is rewarded if done and is punished if left out.

وَالْمَنْدُوب مَا يُثَاب على فعله وَلَا يُعَاقب على تَركه

Recommended is an action which is rewarded if done and is not punished if left out.

والمباح مَا لَا يُثَاب على فعله وَلَا يُعَاقب على تَركه

Permissible is an action which is neither rewarded if done nor is punished if left out.

والمحظور مَا يُثَاب على تَركه ويعاقب على فعله

Forbidden is an action which is rewarded if left out and is punished if done.

وَالْمَكْرُوه مَا يُثَاب على تَركه وَلَا يُعَاقب على فعله

Disapproved is an action which is rewarded if left out and is not punished if done.

وَالصَّحِيح مَا يتَعَلَّق بِهِ النّفُوذ ويعتد بِهِ

Sound is the proper implementation of a deed and is considered acceptable.

وَالْبَاطِل مَا لَا يتَعَلَّق بِهِ النّفُوذ وَلَا يعْتد بِهِ

Invalid is the improper implementation of a deed and is not considered acceptable.

الْفرق بَين الْفِقْه وَالْعلم وَالظّن وَالشّكّ

Difference between jurisprudence, knowledge, suspicion, and doubt

وَالْفِقْه أخص من الْعلم وَالْعلم معرفَة الْمَعْلُوم على مَا هُوَ بِهِ وَالْجهل تصور الشَّيْء على خلاف مَا هُوَ بِهِ

Jurisprudence is more specific than knowledge. Knowledge is to recognize what is known as it exists in reality. Ignorance is to imagine something differently than it is in reality.

وَالْعلم الضَّرُورِيّ مَا لم يَقع عَن نظر واستدلال كَالْعلمِ الْوَاقِع بِإِحْدَى الْحَواس الْخمس الَّتِي هِيَ السّمع وَالْبَصَر والشم والذوق واللمس أَو التَّوَاتُر

Unavoidable knowledge is what does not result from reflection or inference, such as knowledge of reality by one of the five senses, which are hearing, seeing, smelling, tasting, and touching, or by unanimous reports (*al-tawātir*).

وَأما الْعلم المكتسب فَهُوَ الْمَوْقُوف على النّظر وَالِاسْتِدْلَال وَالنَّظَر هُوَ الْفكر فِي حَال المنظور فِيهِ وَالِاسْتِدْلَال طلب الدَّلِيل وَالدَّلِيل هُوَ المرشد إِلَى الْمَطْلُوب لِأَنَّهُ عَلامَة عَلَيْهِ

As for acquired knowledge, it is dependent upon reflection and inference. Reflection is thought upon the situation under reflection. Inference is seeking an indication. An indication guides to what is sought, as it points to it.

وَالظّن تَجْويز أَمريْن أَحدهمَا أظهر من الآخر

Suspicion is the presence of two possibilities, one of which is more likely than the other.

وَالشّكّ تَجْويز أَمريْن لَا مزية لأَحَدهمَا على الآخر

Doubt is the presence of two possibilities, neither of which is more likely than the other.

وَعلم أصُول الْفِقْه طرقه على سَبِيل الْإِجْمَال وَكَيْفِيَّة الِاسْتِدْلَال بهَا

The knowledge of the fundamentals of jurisprudence are its general methods and its mode of drawing inferences.

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أَبْوَاب أصُول الْفِقْه

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Topics of Uṣūl al-Fiqh

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وأبواب أصُول الْفِقْه أَقسَام الْكَلَام وَالْأَمر وَالنَّهْي وَالْعَام وَالْخَاص والمجمل والمبين وَالظَّاهِر والمؤول وَالْأَفْعَال النبي صلى الله عليه وسلم والناسخ والمنسوخ وَالْإِجْمَاع وَالْأَخْبَار وَالْقِيَاس والحظر وَالْإِبَاحَة وترتيب الْأَدِلَّة وَصفَة الْمُفْتِى والمستفتى وَأَحْكَام الْمُجْتَهدين

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The topics of the fundamentals of jurisprudence are the types of statements, commands and prohibitions, general and specific, ambiguous and clear, apparent and interpreted, actions of the Prophet, peace and blessings be upon him, abrogating and abrogated, consensus, reports, analogy, the basis of forbidden and permissible, priority of evidences, characteristics of the legal expert, characteristics of one seeking a verdict, and the rules of independent legal reasoning.

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أَقسَام الْكَلَام

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Types of statements

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فَأَما أَقسَام الْكَلَام فَأَقل مَا يتركب مِنْهُ الْكَلَام اسمان أَو اسْم وَفعل أَو فعل وحرف أَو اسْم وحرف

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As for the types of speech, the smallest units from which a sentence is composed are two nouns, or a noun and a verb, or a verb and a particle, or a noun and a particle.

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وَالْكَلَام يَنْقَسِم إِلَى أَمر وَنهي وَخبر واستخبار وينقسم أَيْضا إِلَى تمن وَعرض وَقسم

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Speech is divided into commands and prohibitions, declarations and questions. It is also divided into exclamations, suggestions, and oaths.

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وَمن وَجه آخر يَنْقَسِم إِلَى حَقِيقَة ومجاز فالحقيقة مَا بَقِي فِي الِاسْتِعْمَال على مَوْضُوعه وَقيل مَا اسْتعْمل فِيمَا اصْطلحَ عَلَيْهِ من المخاطبة وَالْمجَاز مَا تجوز عَن مَوْضُوعه

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From another point of view, it is divided into literal and figurative speech. Literal speech is that which is used in its ordinary meaning, or it is said that it is used as a specific term known to its audience. Figurative speech is what goes beyond its ordinary meaning.

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والحقيقة إِمَّا لغوية وَإِمَّا شَرْعِيَّة وَإِمَّا عرفية وَالْمجَاز إِمَّا أَن يكون بِزِيَادَة أَو نُقْصَان أَو نقل أَو اسْتِعَارَة

</div>

Literal speech can be either linguistic, legal, or customary. Figurative speech can be by an addition, deletion, transfer, or metaphor.

فالمجاز بِالزِّيَادَةِ مثل قَوْله تَعَالَى لَيْسَ كمثله شَيْء فالكاف هنا زيادة في الكلام لتأكيد ذلك المعنى

Figurative by addition is like the saying of Allah Almighty, 'There is nothing like unto Him,' (42:11) in which an additional 'like' is added to emphasize the meaning.

وَالْمجَاز بِالنُّقْصَانِ مثل قَوْله تَعَالَى واسأل الْقرْيَة أي اسأل أهل القرية

Figurative by deletion is like the saying of Allah Almighty, 'Ask the village,' (12:82) meaning ask the people of the village.

وَالْمجَاز بِالنَّقْلِ كالغائط فِيمَا يخرج من الْإِنْسَان أي نقل اللفظ عن معناه الأصلي إلى معنىً آخر ملتبس به

Figurative by transfer is like the word 'gully' (ghā'iṭ) to refer to what exits the human body, as the original linguistic meaning has been changed to another obscure meaning.

وَالْمجَاز بالاستعارة كَقَوْلِه تَعَالَى جدارا يُرِيد أن ينْقض فالشيء يشبه بغيره

Figurative by metaphor is like the saying of Allah Almighty, 'A wall wanting to collapse…' (18:77) as an inanimate thing has been compared to something else.

الأَمر وَالنَّهْي

Commands and prohibitions

وَالأَمر استدعاء الْفِعْل بالْقَوْل مِمَّن هُوَ دونه على سَبِيل الْوُجُوب

The command is a call to action by words to a subordinate, in the manner of an obligation.

وصيغته افْعَل وَهِي عِنْد الْإِطْلَاق والتجرد عَن الْقَرِينَة تحمل عَلَيْهِ إِلَّا مَا دلّ الدَّلِيل على أَن المُرَاد مِنْهُ النّدب أَو الْإِبَاحَة وَلَا تَقْتَضِي التّكْرَار على الصّحِيح إِلَّا مَا دلّ الدَّلِيل على قصد التّكْرَار وَلَا تقتضى الْفَوْر

Its grammatical form is, 'Do!' (if'al). It is understood to be in an absolute sense when it has no other mitigating factor to interpret it, unless there is an indication to convey the meaning recommendation or permission. It does not necessitate repetition, according to the correct opinion, unless there is an indication to convey the purpose of repetition. Neither does it necessitate immediacy.

وَالأَمر بِإِيجَاد الْفِعْل أَمر بِهِ وَبِمَا لَا يتم الْفِعْل إِلَّا بِهِ كالأمر بِالصَّلَاةِ فَإِنَّهُ أَمر بِالطَّهَارَةِ المؤدية إِلَيْهَا وَإِذا فعل يخرج الْمَأْمُور عَن الْعهْدَة

The command to produce an action is a command to do it and whatever is done to complete it, such as the command to pray, as it is also a command to perform purification prior to it. If the action is done, the one commanded is absolved of further responsibility.

يدْخل فِي خطاب الله تَعَالَى الْمُؤْمِنُونَ وَأما الساهي وَالصَّبِيّ وَالْمَجْنُون فهم غير داخلين فِي الْخطاب

The address of Allah Almighty includes the believers (men and women). As for the forgetful, adolescents, and the insane, they are not being addressed.

وَالْكفَّار مخاطبون بِفُرُوع الشَّريعَة وَبِمَا لَا تصح إِلَّا بِهِ وَهُوَ الْإِسْلَام لقَوْله تَعَالَى مَا سلككم فِي سقر قَالُوا لم نك من الْمُصَلِّين

The unbelievers are addressed with the branches of the Law and with what is required for its soundness, which is Islam, as in the saying of the Almighty, 'What caused you to enter fire? They will say: We were not among those who prayed.' (74:42-43)

وَالْأمر بالشَّيْء نهي عَن ضِدّه وَالنَّهْي عَن الشَّيْء أَمر بضده

The command to do something is a prohibition of doing its opposite, and a prohibition of something is a command to do its opposite.

وَالنَّهْي استدعاء التّرْك بالْقَوْل مِمَّن هُوَ دونه على سَبِيل الْوُجُوب وَيدل على فَسَاد الْمنْهي عَنهُ

The prohibition is a call to leave an action by words to a subordinate, in the manner of an obligation and which indicates the moral corruption of what is prohibited.

وَترد صِيغَة الْأمر وَالْمرَاد بِهِ الْإِبَاحَة أَو التهديد أَو التَّسْوِيَة أَو التكوين

The grammatical form of the command might be used but its intention is to convey permissibility, a rhetorical threat, equality between two actions, or transformation into something else.

الْعَام وَالْخَاص

General and specific

وَأما الْعَام فَهُوَ مَا عَم شَيْئَيْنِ فَصَاعِدا من قَوْله عممت زيدا وعمرا بالعطاء وعممت جَمِيع النَّاس بالعطاء

As for the general meaning, it is what generalizes two or more things. It comes from the phrase, 'I included Zayd and Umar in the gift,' and, 'I included all people in the gift.'

وَأَلْفاظ أَرْبَعَة الِاسْم الْوَاحِد الْمُعَرّف بِالْألف وَاللَّام وَاسم الْجمع الْمُعَرّف بِاللَّامِ والأسماء المبهمة كمن فِيمَن يعقل وَمَا فِيمَا لَا يعقل وَأي فِي الْجَمِيع وَأَيْنَ فِي الْمَكَان وَمَتى فِي الزَّمَان وَمَا فِي الِاسْتِفْهَام وَالْجَزَاء وَغَيره وَلَا فِي النكرات

Its wordings are four: a single noun with the definite article, plural nouns with the definite article, undefined nouns such as 'whoever' for animate beings, 'whatever' for inanimate beings, 'whichever' for anything, 'wherever' for place, 'whenever' for time, 'whatever' for interrogatives, consequences, and other things, and 'no' for indefinite nouns.

والعموم من صِفَات النُّطْق وَلَا يجوز دَعْوَى الْعُمُوم فِي غَيره من الْفِعْل وَمَا يجْرِي مجْرَاه

Generality is a characteristic of speech. It is not permissible to claim general application in actions which are not so and in whatever has a defined application.

وَالْخَاص يُقَابل الْعَام والتخصيص تَمْييز بعض الْجُمْلَة وَهُوَ يَنْقَسِم إِلَى مُتَّصِل ومنفصل

Specific is the opposite of general. Specification is distinguished by part of the sentence. It is divided into dependent and independent clauses.

فالمتصل الِاسْتِثْنَاء وَالتَّقْيِيد بِالشّرطِ وَالتَّقْيِيد بِالصّفةِ

The dependent clause can be an exception, a restriction to conditions, and a restriction to characteristics.

وَالِاسْتِثْنَاء إِخْرَاج مَا لولاه لدخل فِي الْكَلَام وَإِنَّمَا يَصح بِشَرْط أَن يبْقى من المشتثنى مِنْهُ شَيْء وَمن شَرطه أَن يكون مُتَّصِلا بِالْكَلَام

An exception is excluding what would otherwise be included in the statement. It is only sound on condition that something remains for which the exception is made and on condition that it is connected to the statement.

وَيجوز تَقْدِيم الِاسْتِثْنَاء على الْمُسْتَثْنى مِنْهُ وَيجوز الِاسْتِثْنَاء من الْجِنْس وَمن غَيره

It is possible for an exception to be stated before that for which it is made, and it is possible for a category to be excepted from a different category.

وَالشّرط يجوز أَن يتَأَخَّر عَن الْمَشْرُوط وَيجوز أَن يتَقَدَّم عَن الْمَشْرُوط

Conditions can potentially be stated after mentioning what is made conditional, and potentially before mentioning what is made conditional.

والمقيد بِالصّفةِ يحمل عَلَيْهِ الْمُطلق كالرقبة قيدت بِالْإيمَان فِي بعض الْمَوَاضِع وأطلقت فِي بعض الْمَوَاضِع فَيحمل الْمُطلق على الْمُقَيد

That which is restricted to a characteristic is given the same interpretation as if it were unqualified, such as a slave characterized by faith in some places and unqualified in other places. The unqualified is interpreted as though it were qualified by the characteristic.

وَيجوز تَخْصِيص الْكتاب بِالْكتاب وَتَخْصِيص الْكتاب بِالسنةِ وَتَخْصِيص السّنة بِالْكتاب وَتَخْصِيص السّنة بِالسنةِ وَتَخْصِيص النُّطْق بِالْقِيَاسِ ونعني بالنطق قَول الله سُبْحَانَهُ وَتَعَالَى وَقَول الرَّسُول صلى الله عَلَيْهِ وَسلم

It is possible for the Book (the Quran) to be specified by the Book, for the Book to be specified by the Sunnah, for the Sunnah to be specified by the Book, for the Sunnah to be specified by the Sunnah, and for statements to be specified by analogy. What we mean by 'statements' are the sayings of Allah Almighty and His Messenger, peace and blessings be upon him.

الْمُجْمل والمبين

Ambiguous and clear

والمجمل مَا افْتقر إِلَى الْبَيَان وَالْبَيَان إِخْرَاج الشَّيْء من حيّز الْإِشْكَال إِلَى حيّز التجلي وَالنَّص مَا لَا يحْتَمل إِلَّا معنى وَاحِدًا وَقيل مَا تَأْويله تَنْزيله

The ambiguous is what lacks clarity. The clear is what turns something vague into something evident. The decisive text (*al-naṣṣ*) is what cannot be interpreted except with one meaning, or it is said that it is interpreted as it was revealed.

الظَّاهِر والمؤول

Apparent meaning and interpretation

وَالظَّاهِر مَا احْتمل أَمرين أَحدهمَا أظهر من الآخر ويؤول الظَّاهِر بِالدَّلِيلِ وَيُسمى الظَّاهِر بِالدَّلِيلِ

The apparent meaning is what can potentially be interpreted in two ways, one of which is more obvious than the other. The apparent meaning is interpreted differently if there is an indication to do so, which is called 'apparent by indication.'

الْأَفْعَال النبي صلى الله عليه وسلم

Actions of the Prophet, peace and blessings be upon him

فعل صَاحب الشَّريعَة صلى الله عليه وسلم لَا يَخْلُو إِمَّا أَن يكون على وَجه الْقرْبَة وَالطَّاعَة أَو غير ذَلِك

The actions of the law-giver, peace and blessings be upon him, are not vacuous, whether they are from the perspective of worship, obedience, or something else.

فَإِن دلّ دَلِيل على الِاخْتِصَاص بِهِ يحمل على الِاخْتِصَاص

If there is an indication demonstrating the action is specific to him, then it is interpreted as specific to him.

وَإِن لم يدل لَا يخصص بِهِ لِأَن الله تَعَالَى يَقُول لَّقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ

If there is no indication, it is not specific to him as Allah Almighty says, 'Certainly in the Messenger of Allah you have an excellent example,' (33:21).

فَيحمل على الْوُجوب عِنْد بعض أَصْحَابنَا وَمن بعض أَصْحَابنَا من قَالَ يحمل على النّدب وَمِنْهُم من قَالَ يتَوَقَّف عَنهُ

It is interpreted as an obligation, according to some of our scholars. Among our scholars are some who said it should be interpreted as a recommendation, and among them are those who suspended judgment.

فَإِن كَانَ على وَجه غير الْقرْبَة وَالطَّاعَة فَيحمل على الْإِبَاحَة فِي حَقه وحقنا

If it were from a perspective other than worship and obedience, it is interpreted as permissible.

وَإِقْرَار صَاحب الشَّريعَة على الْقَوْل الصَّادِر من أحد هُوَ قَول صَاحب الشَّريعَة وَإِقْرَاره على الْفِعْل كَفِعْلِهِ

The tacit approval given by the law-giver to a statement issued by anyone is itself a statement of the law-giver. The tacit approval of an action is his action.

وَمَا فعل فِي وقته فِي غير مَجْلِسه وَعلم بِهِ وَلم يُنكره فَحكمه حكم مَا فعل فِي مَجْلِسه

What was done in his time but not in his presence, which he knew about and did not reject, is judged as if it were done in his presence.

النّسخ

Abrogation

وَأما النّسخ فَمَعْنَاه لُغَة الْإِزَالَة وَقيل مَعْنَاهُ النَّقْل من قَوْلهم نسخت مَا فِي هَذَا الْكتاب أَي نقلته

As for abrogation (*al-naskh*), its linguistic meaning is 'removal' or it is said its meaning is 'transfer,' from their phrase, 'I abrogated what was in this book,' that is, I transferred it.

وَحده هُوَ الْخطاب الدَّال على رفع الحكم الثَّابِت بِالْخِطَابِ الْمُتَقَدّم على وَجه لولاه لَكَانَ ثَابتا مَعَ تراخيه عَنهُ

Its definition is an address indicating the lifting of a ruling established by a previous address, without which it would remain in effect.

وَيجوز نسخ الرَّسْم وَبَقَاء الحكم وَنسخ الحكم وَبَقَاء الرَّسْم

It is possible for writing to be abrogated but the ruling to remain, or for the ruling to be abrogated but the writing to remain.

والنسخ إِلَى بدل وَإِلَى غير بدل وَإِلَى مَا هُوَ أغْلظ وَإِلَى مَا هُوَ أخف

Abrogation can be by replacement or without replacement, and to what is stricter or to what is more lenient.

وَيجوز نسخ الْكتاب بِالْكتاب وَنسخ السّنة بِالْكتاب وَنسخ السّنة بِالسنةِ

It is possible for the Book to be abrogated the Book, the Sunnah to be abrogated by the Book, and the Sunnah to be abrogated by the Sunnah.

وَيجوز نسخ الْمُتَوَاتر بالمتواتر مِنْهُمَا وَنسخ الْآحَاد بالآحاد وبالمتواتر وَلَا يجوز نسخ الْمُتَوَاتر بالآحاد

It is possible for a unanimous report to be abrogated by another unanimous report, and a solitary report (*al-āhād*) to be abrogated by another solitary or unanimous report. It is not possible for a unanimous report to be abrogated by a solitary report.

إِذا تعَارض نطقان فَلَا يَخْلُو إِمَّا أَن يَكُونَا عَامينْ أَو خاصين أَو أَحدهمَا عَاما وَالْآخر خَاصّا أَو كل وَاحِد مِنْهُمَا عَاما من وَجه وخاصا من وَجه

If two statements contradict each other, they are inevitably either two general statements, two specific statements, one is general and the other is specific, or each of them is general from one perspective and specific from another perspective.

فَإِن كَانَا عَامينْ فَإِن أمكن الْجمع بَينهمَا جمع وَإِن لم يُمكن الْجمع بَينهمَا يتَوَقَّف فيهمَا إِن لم يعلم التَّاريخ فَإِن علم التَّاريخ ينْسَخ الْمُتَقَدّم بالمتأخر وَكَذَا إِذا كَانَا خاصين

If they are two general statements that can be reconciled, they are reconciled. If they cannot be reconciled, judgment is suspended if their historical order is not known. If the historical order is known, the previous statement is abrogated by the later statement. It is the same if they are two specific statements.

وَإِن كَانَ أَحدهمَا عَاما وَالْآخر خَاصّا فيخصص الْعَام بالخاص وَإِن كَانَ أَحدهمَا عَاما من وَجه وخاصا من وَجه فيخص عُمُوم كل وَاحِد مِنْهُمَا بِخُصُوص الْآخر

If one of them is a general statement and the other is a specific statement, the general statement is restricted by the specific statement. If one of them is general from a perspective and specific from another perspective, the generality of each is restricted by the specification of the other.

الْإِجْمَاع

Consensus

وَإِمَّا الْإِجْمَاع فَهُوَ اتِّفَاق عُلَمَاء الْعَصْر على حكم الْحَادِثَة ونعني بالعلماء الْفُقَهَاء ونعني بالحادثة الْحَادِثَة الشَّرْعِيَّة

As for consensus (*al-ijmā'*), it is the agreement of the scholars of an era on a new ruling. By 'scholars' we mean 'jurists' and by 'new' we mean a new legal issue.

وَإِجْمَاع هَذِه الْأمة حجَّة دون غَيرهَا لقَوْله صلى الله عَلَيْهِ وَسلم لا تجتمع أمتي على ضَلَالَة وَالشَّرْع ورد بعصمة هَذِه الْأمة

The consensus of this nation is a proof in itself, due to his saying, peace and blessings be upon him, 'My nation will not gather together upon misguidance.' The law has related the immunity of this nation from error (in consensus).

وَالْإِجْمَاع حجَّة على الْعَصْر الثَّانِي وَفِي أَي عصر كَانَ وَلَا يشْتَرط انْقِرَاض الْعَصْر على الصَّحِيح

Consensus is a binding proof for the following generation and in each generation thereafter. It is not a condition that the first generation pass away, according to the correct opinion.

فَإِن قُلْنَا انْقِرَاض الْعَصْر شَرط فَيعْتَبر قَول من ولد فِي حياتهم وتفقه وَصَارَ من أهل الِاجْتِهَاد فَلهم أَن يرجعوا عَن ذَلِك الحكم

If we say that the passing of the first generation is a condition, the opinion of one would be considered who was born in their lifetimes, acquired legal knowledge, and became a legal expert, that they may retract this ruling.

وَالْإِجْمَاع يَصح بقَوْلهمْ وبفعلهم وَبقول الْبَعْض وبفعل الْبَعْض وانتشار ذَلِك وسكوت الْبَاقِينَ وَقَول الْوَاحِد من الصَّحَابَة لَيْسَ بِحجَّة على غَيره على القَوْل الْجَدِيد

Consensus is valid by their statements and actions, or the widespread statements and actions of some of them while the remaining jurists are silent. The statement of a single companion is not a binding proof over others, according to the new school of al-Shāfi'ī.

الأَخْبَار

Reports

وَأما الأَخْبَار فَالْخَبَر مَا يدْخلهُ الصدْق وَالْكذب وَالْخَبَر يَنْقَسِم إِلَى قسمَيْنِ آحَاد ومتواتر

As for reports, they are what has been narrated, including what is true and what is false. They are divided into two categories: solitary reports and unanimous reports.

فالمتواتر مَا يُوجب الْعلم وَهُوَ أَن يرْوى جمَاعَة لَا يَقع التواطؤ على الْكَذِب من مثلهم إِلَى أَن يَنْتَهِي إِلَى الْمخبر عَنهُ وَيكون فِي الأَصْل عَن مُشَاهدَة أَو سَماع لَا عَن اجْتِهَاد

Unanimous reports necessarily result in accurate knowledge. They are reported by groups who could not have conspired upon a lie, from those similar to them up to the end of transmission, and being what was originally witnessed or heard, not from independent reasoning.

والآحاد هُوَ الَّذِي يُوجب الْعَمَل وَلَا يُوجب الْعلم وينقسم إِلَى مُرْسل ومسند

Solitary reports are those which are acted upon but which do not necessarily result in accurate knowledge. They are divided into unattributed (*mursal*) and attributed transmissions (*musnad*).

فَالْمُسْنَدُ مَا اتَّصل إِسْنَاده والمرسل مَا لم يتَّصل إِسْنَاده

The attributed transmission is fully connected in its chain of narrators. The unattributed report is not fully connected in its chain of narrators.

فَإِن كَانَ من مَرَاسِيل غير الصَّحَابَة فَلَيْسَ ذَلِك حجَّة إِلَّا مَرَاسِيل سعيد بن الْمسيب فَإِنَّهَا فتشت فَوجدت مسانيد عَن النَّبِي صلى الله عَلَيْهِ وَسلم

If unattributed reports are from those besides the companions, they are not a binding proof unless they are the reports of Sa'īd ibn al-Musayyib, as they have been investigated and found to be attributable to the Prophet, peace and blessings be upon him.

والعنعنة تدخل على الأَسَانِيد

Reports with imprecise transmission terminology (saying 'from' or *'an*) are included in attributed reports.

وَإِذا قَرَأَ الشَّيْخ يجوز للراوي أَن يَقُول حَدثني أَو أَخْبرنِي وَإِذا قَرَأَ هُوَ على الشَّيْخ فَيَقُول أَخْبرنِي وَلَا يَقُول حَدثني وَإِن أَجَازه الشَّيْخ من غير قِرَاءَة فَيَقُول أجازني أَو أَخْبرنِي إِجَازَة

If the Shaykh reads a report, it is permissible for the narrator to say 'he narrated to me,' (*ḥaddathanī*) or 'he informed me,' (*akhbaranī*). If the narrator reads a report to the Shaykh, he says 'he informed me' and he does not say 'he narrated to me.' If the Shaykh grants him license without reading, he says 'he granted me license' or 'he informed me by license.'

الْقِيَاس

Analogy

وَأما الْقِيَاس فَهُوَ رد الْفَرْع إِلَى الْأَصْل بعلة تجمعهما فِي الحكم وَهُوَ يَنْقَسِم إِلَى ثَلَاثَة أَقسَام إِلَى قِيَاس عِلّة وَقِيَاس دلَالَة وَقِيَاس شبه

As for analogy, it is referring a derived case back to the original case through an effective cause (*'illah*) that connects them in the ruling. It is divided into three categories: analogy by effective cause, analogy by indication, and analogy by similarity.

فَقِيَاس الْعِلَّة مَا كَانَت الْعِلَّة فِيهِ مُوجبَة لْلحكم

Analogy by effective cause contains an effective cause that necessitates the ruling.

وَقِيَاس الدّلَالَة هُوَ الِاسْتِدْلَال بِأحد النظيرين على الآخر وَهُوَ أَن تكون الْعِلَّة دَالَّة على الحكم وَلَا تكون مُوجبَة لْلحكم

Analogy by indication is inferred by one of two identical cases from the other. It is that the effective cause indicates the ruling but does not necessitate the ruling.

وَقِيَاس الشّبه هُوَ الْفَرْع المتردد بَين أصلين وَلَا يُصَار إِلَيْهِ مَعَ إِمْكَان مَا قبله

Analogy by similarity is a derived case relatable to two original cases. It is not resorted to if the previous types of analogy are possible.

وَمن شَرط الْفَرْع أَن يكون مناسبا لْلأَصْل وَمن شَرط الْأَصْل أَن يكون ثَابتا بِدَلِيل مُتَّفق عَلَيْهِ بَين الْخَصْمَيْنِ

Among the conditions of the derived case is that it be suitable to the original case. Among the conditions of the original case is that it be established by evidence and agreed upon by conflicting parties.

وَمن شَرط الْعلَّة أَن تطرد فِي معلولاتها فَلَا تنتقض لفظا وَلَا معنى

Among the conditions of the effective cause is that it be continuous in its effects, such that it does not alter its wording or meaning.

وَمن شَرط الحكم أَن يكون مثل الْعلَّة فِي النَّفْي وَالْإِثْبَات أَي فِي الْوُجود والعدم فَإِن وجدت الْعلَّة وجد الحكم وَالْعلَّة هِيَ الجالبة لِلْحكم

Among the conditions of the ruling is that it be similar to the effective cause in negation or affirmation, that is, in its existence or non-existence. If the effective cause is found, the ruling is found. The effective cause is what results in the ruling.

الْحَظْر وَالْإِبَاحَة

Forbidden and permissible

وَأما الْحَظْر وَالْإِبَاحَة فَمن النَّاس من يَقُول إِن الْأَشْيَاء على الْحَظْر إِلَّا مَا أَباحته الشَّريعَة فَإِن لم يُوجد فِي الشَّريعَة مَا يدل على الْإِبَاحَة يتَمَسَّك بِالْأَصْلِ وَهُوَ الْحَظْر

As for forbidden and permissible, among people are those who say that things are forbidden except if the law permits them. If no indication is found in the law to permit them, the default position is adhered to, which is that it is forbidden.

وَمن النَّاس من يَقُول بِضده وَهُوَ أَن الأَصْل فِي الْأَشْيَاء أَنَّهَا على الْإِبَاحَة إِلَّا مَا حظره الشَّرْع

And among people are those who say the opposite, which is that the default position of things is permission except if the law forbids them.

اسْتِصْحَاب الْحَال

Presumption of continuity

وَمعنى اسْتِصْحَاب الْحَال الَّذِي يحْتَج بِهِ أَن يستصحب الأَصْل عِنْد عدم الدَّلِيل الشَّرْعِيّ

The meaning of 'presumption of continuity' (*istiṣḥāb al-ḥāl*) which is binding is that the default position (*al-aṣl*) is taken in the absence of legal evidence.

تَرْتِيب الْأَدِلَّة

Priority of evidences

وَأما الْأَدِلَّة فَيقدم الْجَلِيّ مِنْهَا على الْخَفي والموجب للْعلم على الْمُوجب للظن والنطق على الْقِيَاس وَالْقِيَاس الْجَلِيّ على الْخَفي

As for evidences, precedence is given to the obvious over the obscure, to certain knowledge over certain suspicion, to transmission over analogy, and to obvious analogy over obscure analogy.

فَإِن وجد فِي النُّطْق ما يغير الْأَصْل يعْمل بالنطق وَإِلَّا فيستصحب الْحَال

If a statement is found which changes the default position, the statement is acted upon, otherwise continuity is presumed.

شُرُوط الْمُفْتِي

Requirements of the legal expert

وَمن شَرط الْمُفْتِي أَن يكون عَالما بالفقه أصلا وفرعا خلافًا ومذهبا وَأَن يكون كَامِل الْأَدِلَّة فِي الِاجْتِهَاد عَارفًا بِمَا يحْتَج إِلَيْهِ فِي استنباط الْأَحْكَام وَتَفْسِير الْآيَات الْوَارِدَة فِي الْأَحْكَام وَالْأَخْبَار الْوَارِدَة فِيهَا

Among the conditions of the legal expert are that he is knowledgeable in jurisprudence, its roots, its branches, its disagreements, and its doctrines, that he is completely aware of the indications of independent legal reasoning, recognizing what is needed to derive rulings, the exegesis of verses related to the rulings, and the reports related to them.

شُرُوط المستفتي

Requirements of one seeking a verdict

وَمن شُرُوط المستفتي أَن يكون من أهل التَّقْلِيد فيقلد المفتي في الفتيا وَلَيْسَ لِلْعَالم أَن يُقَلّد والتقليد قبُول قَول الْقَائِل بِلَا حجَّة

Among the conditions of one seeking a verdict is that he is among those incapable of independent legal reasoning, so he conforms to the legal expert in his verdict. It is not for the scholar to conform to others. Legal conformity (*al-taqlīd*) is to accept the opinion of someone without knowing its proof.

فعلى هَذَا قبُول قَول النَّبِي صلى الله عَلَيْهِ وَسلم يُسمى تقليدا

Based on this, accepting the statement of the Prophet, peace and blessings be upon him, is called conformity.

وَمِنْهُم من قَالَ التَّقْلِيد قبُول قَول الْقَائِل وَأنت لَا تَدْري من أَيْن قَالَه

Among them are those who said legal conformity is to accept the opinion of someone without knowing on what basis he said it.

فَإِن قُلْنَا إِن النَّبِي صلى الله عَلَيْهِ وَسلم كَانَ يَقُول بِالْقِيَاسِ فَيجوز أَن يُسمى قبُول قَوْله تقليدا

If we say that the Prophet, peace and blessings be upon him, spoke by analogy, it is permissible to refer to acceptance his statement as conformity.

الِاجْتِهَاد

Independent legal reasoning

وَأما الِاجْتِهَاد فَهُوَ بذل الوسع فِي بُلُوغ الْغَرَض فالمجتهد إِن كَانَ كَامِل الْآلَة فِي الِاجْتِهَاد فِي الْفُرُوع فَأصَاب فَلهُ أَجْرَانِ وَإِن اجْتهد وَأَخْطَأ فَلهُ أجر وَاحِد

As for independent legal reasoning (*al-ijtihād*), it is to expend the sum of one's efforts in achieving the objective. If the expert jurist has mastery over the mechanisms of legal reasoning in secondary issues and his verdict is correct, he will have two rewards. If he reasons to a verdict and is mistaken, he will have one reward.

وَلَا يجوز كل مُجْتَهد فِي الْأُصُول الكلامية مُصِيب لِأَن ذَلِك يُؤَدِّي إِلَى تصويب أهل الضَّلَالَة وَالْمَجُوس وَالْكفَّار والملحدين

It is not possible that every expert jurist is correct in foundational theological issues, for that would lead to declaring the people of misguidance to be correct, such as pagans, unbelievers, and heretics.

وَدَلِيل من قَالَ لَيْسَ كل مُجْتَهد فِي الْفُرُوع مصيبا قَوْله صلى الله عَلَيْهِ وَسلم من اجْتهد وَأصَاب فَلهُ أَجْرَانِ وَمن اجْتهد وَأَخْطَأ فَلهُ أجر وَاحِد

The evidence of those who say that not every expert jurist is correct in secondary issues is [his saying](#), peace and blessings be upon him, "Whoever strives in his reasoning and is correct, he will have two rewards. Whoever strives in his reasoning and is mistaken, he will have one reward."

وَوجه الدَّلِيل أَن النَّبِي صلى الله عَلَيْهِ وَسلم خطأ الْمُجْتَهد تَارَة وَصَوَّبَهُ أُخْرَى

The view of the evidence is that the Prophet, peace and blessings be upon him, declared an expert jurist to be mistaken sometimes and to be correct other times.

Success comes from Allah, and Allah knows best.